E: 4410-09-P

DEPARTMENT OF JUSTICE
Drug Enforcement Administration

Poplar Grove Pharmacy Inc.;
Decision and Order

On November 20, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Poplar Grove Pharmacy Inc. (hereinafter, Registrant) of Baltimore, Maryland. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. FP3109027. *Id.* It alleged that Registrant "has no state authority to handle controlled substances." *Id.* (citing 21 U.S.C. § 824(a)(3)).

Specifically, the OSC alleged that, "[o]n April 15, 2019, the Maryland State Board of Pharmacy (hereinafter, MBP) . . . issued an Order for Summary Suspension, suspending . . . [Registrant's] Maryland pharmacy permit." OSC, at 2. The OSC alleged that "[c]onsequently, the DEA must revoke . . . [Registrant's] DEA registration based on . . . [its] lack of authority to handle controlled substances in the State of Maryland." *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 C.F.R. § 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. OSC, at 3 (citing 21 U.S.C. § 824(c)(2)(C)).

Adequacy of Service

In a sworn Declaration, dated May 22, 2020, a DEA Diversion Investigator assigned to the Baltimore District Office (hereinafter, DI) stated that he accomplished personal service of the OSC on Susan Nwoga, Registrant's registration contact, at the Maryland Correctional Institution for Women on December 10, 2019. Request for Final Agency Action (hereinafter, RFAA), EX 4 (DI Declaration), at 1. The DI stated that Ms. Nwoga took the OSC. *Id.*

Further evidence of the adequacy of the Government's service is Registrant's proposed Corrective Action Plan (hereinafter, CAP) dated December 16, 2019. RFAA EX 5 (CAP), at 1. Accordingly, based on the evidence in the RFAA and the Government's representations, I find that the Government's service of the OSC was adequate.

Registrant's Proposed CAP

As already discussed, Registrant timely submitted a proposed CAP. *Id.* In the CAP, Registrant asked that "DEA begin an internal investigation on it's [sic] failure to provide . . . [Ms. Nwoga] with whistle blower protection and why when big retail pharmacies are met with fines, the DEA set out to entrap . . . [her], a black woman who is an American of Nigerian descent." *Id.* at 4. Ms. Nwoga "denied all charges" and stated that she is "entitled to all privileges of a licensed pharmacist."[1] *Id.* In the CAP, Registrant did not address the status of its Maryland pharmacy permit, including whether the MBP suspended it.

I find that Registrant waived its right to a hearing and proposed a CAP. I find that the Assistant Administrator, Diversion Control Division, denied "the request to discontinue or defer administrative proceedings." RFAA EX 6 (Letter Denying Proposed CAP), at 1. I also find that the Assistant Administrator concluded that "there is no potential modification of . . . [the proposed CAP] that could or would alter . . . [his] decision in this regard." *Id.* I agree with the Assistant Administrator's CAP-related decisions.

The Government forwarded its RFAA, along with the evidentiary record, to my office on May 28, 2020. In its RFAA, the Government represented that "Registrant currently lacks authority to handle controlled substances in the state of Maryland, the jurisdiction where it was

[1] Most of Registrant's CAP concerned Ms. Nwoga's allegations about "the DEA's . . . failure to follow their own monitoring policy, thus, allowing the Baltimore city streets to become flooded with controlled narcotics." RFAA EX 5, at 2. The CAP stated that she "satisfied all the requirements of whistle blower," but "[r]ather than protect . . . [her] the DEA began an illegal under cover [sic] operation that spanned many years" and entrapped her. *Id.* at 2-3. According to the CAP, "[t]his case is wrought with very ugly racism, anti-feminism, and anti-immigrant overtones in the Baltimore City DEA. The criminal case is under appeal and when reviewed by legal experts, the experts say I will absolutely be released from prison." *Id*. at 3.

licensed as a pharmacy and where it is registered with DEA." RFAA, at 3. The Government requested "a Final Order revoking Registrant's DEA registration." *Id.* at 4.

I issue this Decision and Order based on the record submitted by the Government in its RFAA, which constitutes the entire record before me.[2] 21 C.F.R. § 1301.43(e).

Findings of Fact

Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. FP3109027 at the registered address of 709 Poplar Grove Street, Baltimore, MD 21216. RFAA, EX 1 (Certification of Registration), at 1. Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V for the business activity of retail pharmacy. *Id.* Registrant's registration "is in a renewal pending status until the resolution of administrative proceedings." *Id.*

The Status of Registrant's State License and Registration

The Government submitted a certified copy of the "Order for Summary Suspension" concerning Registrant's pharmacy permit No. P05639 that the MBP issued on April 15, 2019. RFAA, EX 3 (hereinafter, Summary Suspension Order). According to the Summary Suspension Order, Registrant's pharmacist "pleaded guilty . . . to approximately three hundred (300) counts that included possession with . . . [the] intent to distribute a controlled dangerous substance, Medicaid fraud, and theft." *Id.* at 5. The Summary Suspension Order stated that, "[f]ollowing her conviction, Pharmacist A was ordered held in jail until the date of her sentencing." *Id.* It also stated that Registrant "failed to request or submit to a closing inspection by the . . . [MBP], as required by . . . [MBP] regulations, to ensure the proper transfer of controlled and non-controlled drug inventory and confidential prescription records." *Id.* at 6.

[2] The RFAA includes Registrant's proposed CAP.

After concluding that "the public health, safety, or welfare imperatively requires emergency action," the MBP "summarily suspended" the permit issued to Registrant to operate as a pharmacy in Maryland. *Id.* The MBP thus prohibited Registrant from operating as a pharmacy in Maryland and ordered the immediate return of all pharmacy permits to the MBP. *Id.*

The Government also submitted a MBP website screen print showing that Registrant's pharmacy permit is "suspended."[3] RFAA, EX 7 (State of Maryland Board of Pharmacy Website Screen Print), at 1.

As already discussed, Registrant's proposed CAP did not address the status of its Maryland pharmacy permit. As such, the Government's record evidence that Registrant's pharmacy permit was summarily suspended is not rebutted.

According to Maryland's online records, of which I take official notice, Registrant's pharmacy permit is still suspended today.[4] State of Maryland Board of Pharmacy Web Lookup/Verification, https://mdbop.mylicense.com/Verification (last visited date of signature of this Order).

In sum, there is no record evidence rebutting the evidence the Government submitted with its RFAA, EX 3 and EX 7, and the evidence from today's Maryland online records supports the Government's evidence. Accordingly, I find that Registrant's Maryland pharmacy permit is currently suspended.

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[3] Although there is no date on RFAA EX 7, the Government represented in its RFAA that EX 7 shows Registrant's pharmacy permit "continues to be suspended." RFAA, at 3.

[4] Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Applicant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Applicant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response shall be filed and served by e-mail on the other party at the e-mail address the party submitted for receipt of communications related to this administrative proceeding, and on the Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

Discussion

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, the Agency has long stated that the possession of authority to dispense controlled substances under the laws of the state in which the practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term "practitioner" to mean "a pharmacy . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which . . . [it] practices . . ., to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the Agency has repeatedly stated that revocation of a practitioner's registration is the appropriate sanction whenever it is no longer authorized to dispense controlled substances under the laws of the state in which she practices. *See, e.g., James L. Hooper, M.D.,* 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.,* 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton, M.D.,* 43 Fed. Reg. at 27,617.

According to Maryland statute, "a person shall be registered by the [Maryland] Department [of Health] before the person manufactures, distributes, or dispenses a controlled dangerous substance in the State."[5] Md. Code Ann., Crim. Law § 5-301(a)(1) (West, Westlaw current through all legislation from the 2020 Regular Session of the General Assembly). Also according to Maryland statute, a "person shall hold a pharmacy permit issued by the (Maryland State) Board (of Pharmacy) before the person may establish or operate a pharmacy in this State." Md. Code Ann., Health. Occ. § 12-401(a) (West, Westlaw current through all legislation from the 2020 Regular Session of the General Assembly). Accordingly, holding a permit issued by the MBP is a prerequisite to operating a pharmacy and dispensing a controlled substance in Maryland.

Here, the undisputed evidence in the record is that Registrant's pharmacy permit is currently suspended. In Maryland, as already discussed, a pharmacy must hold a permit from the MBP to dispense a controlled substance lawfully. Md. Code Ann., Health. Occ. § 12-401(A); Md. Code Ann., Crim. Law § 5-301(a)(1). Registrant currently lacks a pharmacy permit in Maryland and, thus, it is not eligible to dispense controlled substances in Maryland. 21 U.S.C. § 824(a)(3). Accordingly, I will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. FP3109027 issued to Poplar Grove Pharmacy Inc. This Order is effective **[insert Date Thirty Days From the Date of Publication in the Federal Register]**.

Timothy J. Shea,
Acting Administrator.

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[5] "Dispense," under Maryland statute, means "to deliver to the ultimate user . . . by or in accordance with the lawful order of an authorized provider." Md. Code Ann., Crim. Law § 5-101(l)(1) (West, Westlaw current through all legislation from the 2020 Regular Session of the General Assembly).